

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE ALONSO and MARCELO JUAREZ FLORES, on
behalf of himself and all others similarly situated,

Plaintiffs,

-v-

NEW DAY TOP TRADING INC.,

Defendants.

18 Civ. 4745 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

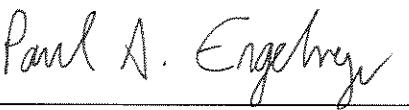
The Court has received an application for a default judgment in favor of five opt-in plaintiffs, Dkt. 80, and the declaration of Molly Brooks, Esq., in support, Dkt. 81 (“Brooks Decl.”). Plaintiffs seek such a default judgment based on their having served the opt-in Plaintiffs’ consent forms on defendant New Day Top Trading, Inc. (“New Day Top”), on June 2, 2020, and on New Day Top’s not thereafter having “ple[d] or otherwise defend[ed] this action.” *See* Brooks Decl. ¶ 27. As of that date, however, this case was in an unusual procedural posture. All plaintiffs’ motions for a default judgment were pending with Magistrate Judge Freeman. Given this posture, it is not clear that a defendant, having received the consent forms, would have understood the action necessary to take to avoid a default judgment as to the opt-in plaintiffs. The Court accordingly is unprepared to enter a default judgment on the present record.

If plaintiffs wish to secure such a judgment, they are to serve New Day Top with a notice attaching the five opt-in plaintiffs’ consent forms and explaining that the five are seeking the damages sought therein for wage and hour violations of the FLSA. Plaintiffs’ notice is further to

notify New Day Top that if, within two weeks of service, it has not appeared in this case and filed an answer to the opt-in plaintiffs' claims, plaintiffs will move for a default judgment, which, if granted, would be followed by an award of damages to each plaintiff. Plaintiffs are to file on the docket of this case, forthwith upon service of this notice, an affidavit attesting to the service of this notice on New Day Top.

Counsel for the plaintiffs is also directed to add each of the opt-in plaintiffs to the docket.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: October 14, 2021
New York, New York